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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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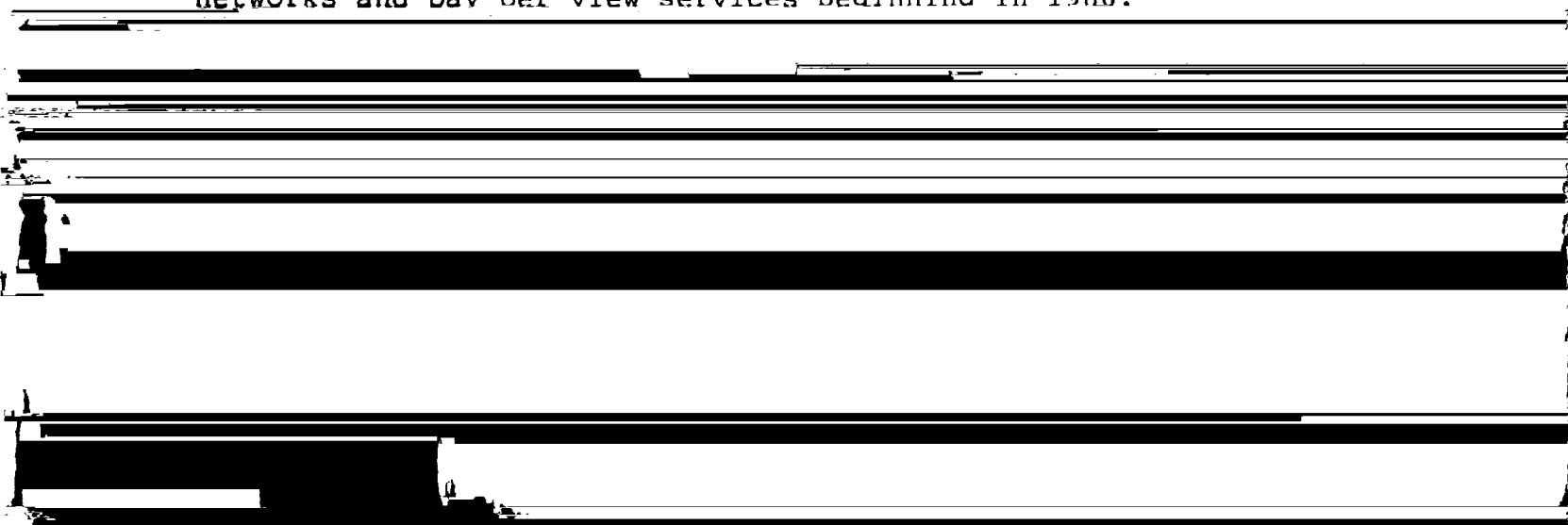
In the Matter of )  
 )  
Implementation of Section 26 of the ) PP Docket No 93-21  
Cable Television Consumer Protection )  
and Competition Act of 1992 )  
 )  
Inquiry into Sports Programming )  
Migration )

REPLY COMMENTS OF  
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its reply comments in the above-captioned proceeding.

INTRODUCTION

Pursuant to section 26 of the 1992 Cable Act, the Commission has initiated this inquiry into the alleged migration of sports programming from broadcast television to cable television and other subscription media. In particular, it seeks empirical evidence, on a sport-by-sport basis, of trends in the carriage of sports programming by broadcast stations, cable programming networks and pay-per-view services beginning in 1980.



myth than reality.<sup>1/</sup> Over the last twelve years, as NCTA demonstrated, broadcast coverage of sports has been on an upward trend. And while cable, too, has substantially increased its coverage of sports, it has not done so at the expense of the broadcast media. Indeed, as commenter after commenter pointed out, cable is supplementing broadcast sports programming by providing access to sports that historically have been unavailable on broadcast television or have been dropped by broadcasters.<sup>2/</sup> With cable's increased coverage, television audiences now have more and better sports programming than ever before.

Nevertheless, despite cable's contribution to sports programming, the Association of Independent Television Stations, Inc. ("INTV") would like to return to a world where the broadcast industry occupies a protected and virtually unchallenged position in televised sports. NCTA will limit its reply to these comments.

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1/ See e.g. Comments of National Collegiate Athletic Association ("NCAA") at iii (cable services are "supplementing broadcast coverage of college sports"); ABC/Capital Cities, Inc. at 3 (cable sports events "have been in addition to -- not replacement of -- sports events shown over-the-air"); see also Comments of National Football League; NBC; Viacom International; ESPN Inc.; Time Warner Entertainment Company; Rainbow Programming Holdings, Inc.; Affiliated Regional Communications, Inc.

2/ Comments of National Hockey League at 3; Comments of Rainbow Programming Holdings, Inc. at 3; Comments of Madison Square Garden Corporation at iii.

DISCUSSION

In its comments, INTV asserts that the Commission has inappropriately focused on the economic concept of "consumer welfare" as its policy objective in analyzing sports programming trends. Instead of looking at market efficiencies, INTV maintains, Congress's primary concern is "to keep sports programming on universally available off-air television."<sup>3/</sup> But what Congress said in the House Report was that "a significant reduction in the quality or quantity of sports programming available on free television, whether professional or collegiate, would be of great concern."<sup>4/</sup> This does not mean that Congress intended to preserve all sports programming for broadcast television nor to protect individual broadcasters from a competitive video marketplace. All that it indicates is that Congress would be concerned if the public's access to sports programming was lost, or seriously reduced, on over-the-air television. And the evidence shows that it is not.

Indeed, the record in this proceeding shows that broadcasters still dominate televised coverage of the major

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3/ Comments of INTV at 3.

4/ H.R. Rep. No. 628, 102d Cong., 2d Sess. at 125. (emphasis added).



audience ratings on broadcast television have declined and player salaries have escalated, sports rights holders are looking to new avenues to market their product and maximize their revenues. Today, joint broadcast, cable, and in some instances pay-per-view, distribution is becoming an economic reality for sports programming.

Nevertheless, INTV wants the broadcast industry to maintain its historic protected status at the expense of new video outlets. It cites a litany of specious concerns to justify its call for regulations to halt the growth and development of sports programming options on cable television.

First, it asserts that local broadcast stations are at a competitive disadvantage in the sports rights market since they must rely on advertising revenues, while cable has two revenue streams. But this ignores the fact that, unlike cable operators, local broadcast stations have the enormous advantage of free, government-granted spectrum which gives them 100 percent market penetration. Cable operators, on the other hand, must pay for and build their distribution facilities and pay franchise fees to the local community.

Moreover, as noted by Rainbow Programming, broadcaster advertising revenues often exceed the combined revenue streams

available to cable programmers.<sup>8/</sup> And, under the 1992 Cable Act, broadcast stations may now avail themselves of another revenue stream through retransmission consent fees. Furthermore, they are assured carriage on the basic service tier and placement in the most desirable channel position under the Act.

Second, INTV asserts that exclusivity rights obtained by ABC, ESPN and the regional sports networks have deprived broadcasters of the freedom to televise certain sporting events. But as INTV must admit, exclusivity is a common practice in the broadcast television industry as well and is an integral part of a competitive market. Indeed, local broadcast stations benefit from FCC rules which guarantee their exclusive rights to syndicated and network programming vis-a-vis cable.<sup>9/</sup>

Third, INTV alleges that "cable operators will be able to spread the costs of sports programming over a number of channels by bundling various cable services together."<sup>10/</sup> Indeed, INTV leaves the impression that there is something almost sinister about all the additional sports programming options available on

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8/ In discussing that broadcasters have the revenues and the clout to outbid SportsChannel, Rainbow also noted that "a broadcaster's revenue stream is often sufficient to enable the broadcaster to sign a team on the basis of revenue sharing arrangements that involve little financial risk to the broadcaster. SportsChannel, by contrast, must commit to pay predetermined rights fees in order to obtain sports programming." Comments of Rainbow Holdings at 7.

9/ See e.g. Broadcasting, Monday Memo, February 5, 1990 at 25 (a cable sports commentary by Ed Durso, Senior Vice President-General Counsel, ESPN).

10/ Comments of INTV at 33.

regional sports networks and cable's ability to provide consumers with certain efficiencies. When stripped of its hyperbole, INTV is not so much concerned with consumer access to major sports as it is with ensuring broadcast dominance of the sports rights market. But the marketplace works both ways. Just as some local broadcast stations may not win out in every sports bidding contest, not all regional sports networks have been successful. But artificially reserving sports programming for one medium will not serve the public interest.

In the end, INTV urges the Commission to take protective measures such as reinstating the sports siphoning rules or placing some limits on future movement of sports programming. But, as we point out, there is no evidence that sports programming is being siphoned from broadcast television to subscription media. And, in any event, there is no reason to adopt rules that are intended to subsidize or enhance the competitive status of broadcasters at the expense of the non-broadcast media. The fact that individual broadcast stations are no longer the only game in town should not be used as a pretext to give broadcasters a handout at the expense of competition and diversity.

#### CONCLUSION

As the foregoing comments and our initial comments demonstrate, there is no evidence that sports programming is being siphoned from broadcast television to cable television, or that broadcast television has suffered any diminution of its hours devoted to sports programming. Moreover, consumers are in

no danger at this time of losing access to the major sporting events traditionally available on over-the-air television. Therefore, there is no need for legislative or regulatory intervention into the sports programming arena.

Respectfully submitted,

NATIONAL CABLE TELEVISION  
ASSOCIATION, INC.

*David L. Brenne*